IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

WA.No. 456 OF 2007()

AGAINST THE JUDGEMENT IN WPC.1013/2007 DATED 11/01/2007

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APPELLANT: PETITIONER IN THE WRIT PETITION

K.P.RAJAGOPALAN NAIR,
KOTTAPPURATHU VEEDU, ANAYADI PO.,
VIA-SOORANAD,QUILON DISTRICT.
(NOW WORKING AS SUPERINTENDENT, DISTRICT JAIL,
TRIVANDRUM.)

BY ADV. SRI.ISSAC GEORGE

RESPONDENTS: RESPONDENTS IN THE WRIT PETITION

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1. STATE OF KERALA REPRESENTED BY THE
CHIEF SECRETARY, GOVT. OF KERALA,
GOVT. SECRETARIAT, TRIVANDRUM-1.

2. PRINCIPAL SECRETARY, HOME DEPARTMENT(B),
GOVT. OF KERALA, GOVERNMENT SECRETARIAT,
TRIVANDRUM-1.

GOVERNMENT PLEADER SRI. SANDESH RAJA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 9/03/2007, THE COURT ON 20.3.2007, DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

W.A. NO. 456 OF 2007

DATED THIS, THE 20TH DAY OF MARCH, 2007.

J U D G M E N T

Raman, J.

Appellant is the petitioner in W.P.(C) 1013/2007. He is working as Superintendent, District Jail, Thiruvananthapuram. He was appointed in the Jail Department as per order dated 2.5.1988. His date of birth was entered in the Service Book based on the entries made in his SSLC Book as 3.2.1952. In 2002 he applied for correction of his date of birth in the SSLC Book with a petition to condone the delay. After considering the matter, the delay was condoned and by Ext.P2 proceedings issued by the Commissioner for Government Examinations, Thiruvananthapuram, dated 25.1.2005, his application for correction of date of birth was allowed and the Secretary to Commissioner for Govt. Examinations was directed to effect necessary corrections regarding the entries in his SSLC Book and in the tabulation register. Subsequently, by application dated 21.2.2005, the appellant applied for incorporating the correction in his service records. By Ext.P4

proceedings of the Government, the same was rejected on the ground that his application was not within time, as per Rules. The writ petition was filed seeking to quash the said order and for a direction to the second respondent to correct the date of birth in his Service Book.

2. The main contention of the appellant/writ petitioner was that since he applied for correction of date of birth in the SSLC Book five years prior to his retirement and the same having been allowed, it was incumbent on the Government to incorporate the correction in his service records as well. According to him, if service records are corrected accordingly, he will get a further period of one year and five months extended service. He also placed reliance on Ext.P16, as according to him, the said order was issued allowing correction of date of birth in a similar case. Therefore, Ext.P4 order of the Government, rejecting his application to correct the date of birth in the service records are contended to be illegal and arbitrary.

3. The learned Single Judge, however, did not agree with the contention of the appellant in this regard. Referring to Ext.P5, especially, para 3 thereof, it was held that the appellant did not apply within time and hence the order declining to correct the date of birth in service records on

the ground that the application was beyond time was found to be correct. The appellant further sought for a direction to consider his review petition Ext.P6 filed on 9.12.2006. But the learned Single Judge found that even the review petition was out of time since the order Ext.P4 declining his request was passed on 30.8.2005 and it is more than a year thereafter that he filed the review petition. Hence the learned Single Judge was not inclined to grant the relief as sought for.

4. Even though a contention was raised that Ext.P5 will not apply to cases like that of the appellant and it is only prospective in nature, the same was rejected. With regard to the contention raised based on Ext.P16, it was held that no reference was made to Ext.P5 therein and merely because some persons were favoured with an order, that by itself is not a ground to seek similar relief, unless he is able to establish his right to get such relief. It is against the said judgment that the present writ appeal is filed.

5. The learned counsel reiterated his contention before us. We have perused the judgment and materials produced in the case and do not find any reason to interfere with the matter for the following reasons:

6. Ext.P5 Government Order clearly stipulates that in the case of Government employees, the application for correction of date of birth, if any, is to be submitted within a period of five years of one's entry in service. However, in the case of those who have already crossed this limit, one year from the date of the order is allowed provided they apply beyond two years period preceding retirement, reckoned with reference to the date of birth as recorded in the service book. This order was issued in supercession of a then existing order issued in this behalf and adopting the system followed by the Government of India in the matter. Ext.P5 in unambiguous terms prescribes a period of five years from entry in service, for making the application for correction of date of birth in service records. Taking note of the fact that Ext.P5 is dated 30.12.1991 the Government allowed one year time for those who have already crossed the limit. Therefore, even in cases where application for correction of date of birth is not made within five years of entry in service, Government prescribed an extended period of one year from the date of the order so as to enable the incumbents to make such applications. In such circumstances, unless the appellant is able to show that he had submitted the application

within a period of one year and before two years of his retirement, he has no right in law to get corrected the date of birth in his service records. Petitioner was not able to substantiate his contention that his application was within time as stipulated in Ext.P5. Now coming to his contention based on Ext.P16 and seeking similar treatment, it has to be said that Ext.P16 order is not issued on similar factual situation at all. Ext.P16 order was passed on 4.12.2004, pursuant to a direction issued by this Court by judgment dated 8.7.2004, directing the Government to consider the matter and to pass just and reasonable order within a time frame. Being a judgment inter parties, the Government was bound to consider the case on merits rather than dismissing it on the ground of delay. Further the facts in that case as revealed by Ext.P16 order itself is clearly distinguishable. That was a case where two persons having the same name were studying in the same school and the date of birth entered in the case of the petitioner therein was the date of birth of the other person for no fault of his. It was in those circumstances that the Government passed orders on merits as directed by this Court. Ext.P16 stands on a different footing which will in no way advance the case of the appellant. There is no fundamental right to get the

date of birth in the service records corrected. Such a right is conferred only by Rules. In this case, when the Government having prescribed a time limit within which such correction application has to be made and in so far the appellant having not made the application within time, extending the period as prescribed in the Government Order is not permissible. Further, irrespective of the fact that the correction was not sought for within time, it is also likely to affect the service conditions of other employees whose seniority would have been fixed based on the date of birth already entered into service records.

Viewing the matter from any angle, the view taken by the learned Single Judge cannot be said to be illegal warranting any interference in this appeal. Accordingly, the writ appeal fails. It is dismissed.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-